IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

Crl.MC.No. 2182 of 2004()

CC.1140/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT -I, ALAPPUZHA

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PETITIONER: 3RD ACCUSED

K.SOMANATHAN NAIR, AGED 60 YEARS,
S/O.K.P.KUNJUKRISHNAN PILLA, RETIRED
ADMINISTRATIVE OFFICER, UNITED INDIA INSURANCE
COMPANY, KOTTAYAM DIVISIONAL OFFICE, KOTTAYAM-
686001 PRESENTLY RESIDING AT KALAMPUKATTU HOUSE,
MANNANAM, KOTTAYAM-686561.

BY ADV. SRI.SREELAL N.WARRIER
SRI.SILVI JOSEPH

RESPONDENTS: COMPLAINANT

SOJI JACOB, S/O.P.J.CHACKO,
AGED 30 YEARS, PUTHUPARAMBIL HOUSE,
NEHRU TROPHY WARD, AVALOOKUNNU P.O.,
ALAPPUZHA -6.

BY ADV. SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN
PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 17/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2182 of 2004

Dated this the 17th day of January 2007

O R D E R

The petitioner is the third accused in a prosecution launched under Sections 120B and 420 read with 34 I.P.C. Proceedings have been initiated on the basis of a private complaint filed by the respondent/complainant.

2. The crux of the allegation is that accused 1 to 3 entered into a conspiracy to fraudulently deceive the petitioner, a person who had applied for a loan under the PMRY scheme for purchase of an autorickshaw. The first accused is the dealer, second accused is the Manager of the Bank and the third accused is an official of the Insurance Company. The allegation is that the complainant was induced to avail a loan from the second accused and hand over the amount to the first accused as price of the autorickshaw to be purchased. The third accused had allegedly issued a policy of insurance in respect of that vehicle which was to be purchased.

3. Though the loan was availed and the price there OF delivered to the first accused and a policy of insurance was

issued by the third accused, no vehicle was actually delivered by the first accused to the complainant. He was thus left in the lurch unable to get his vehicle. It was, in these circumstances, he alleged that accused 1 to 3 had entered into a criminal conspiracy to fraudulently deceive him. He had initially filed a complaint before the learned Judicial First Class Magistrate-I, Alappuzha (a copy of which is produced as Annexure A3). The same was referred to the police by the learned Magistrate under Section 156(3) Cr.P.C. The police, after investigation, filed a final report arraying only the first accused as the accused in the case. Cognizance was taken by the learned Magistrate and C.C.No.60/2000 is pending before the learned Magistrate against the first accused.

4. Dissatisfied by the refusal of the investigator to array the second and the third accused as accused, the complainant filed another fresh complaint showing all the three accused as accused. In the initial complaint, the second and the third accused were shown as Branch Manager of the Canara Bank and the Branch Manager of the United India Insurance Company Limited. No specific person was named as accused 2 and 3.

However, in the second complaint filed by the respondent, he had named two persons as accused 2 and 3. The petitioner herein is the third accused so named. The learned Magistrate took cognizance of the offence allegedly committed by accused 2 and 3 only, it is submitted, a case against the first accused having already been taken cognizance of on the same allegation as C.C.No.66/2000. The case against accused 2 and 3 was taken cognizance of and registered as C.C.No.1140/2003.

5. The petitioner has come to this court, aggrieved by such cognizance taken by the learned Magistrate. He prays that powers under Section 482 Cr.P.C may be invoked to prematurely terminate this unnecessary, baseless and vexatious prosecution against him.

6. The learned counsel raises two specific grounds. First of all, it is contended that the petitioner was not the Branch Manager of the United India Insurance Company Limited on the relevant date. He had taken charge only as per order dated 02/07/1998 (a copy of which is produced as Annexure 8). After he had taken charge, realising the error committed, Annexure A6 order dated 17/07/1998 was passed for returning the premium

amount collected from the complainant as the delivery of the vehicle had not been effected to the complainant. The learned counsel for the petitioner, in these circumstances contends that by no stretch of imagination can the petitioner be made liable for the alleged deception practiced on him of which the first complaint was made as early as on 22/6/1998. The alleged culpable conduct was indulged in by the accused persons - whoever they be in 1997. In these circumstances, it would be a traversity of justice, if the petitioner were to face trial for an offence committed in 1997, he having assumed charge as the officer concerned only as per order dated 02/07/1998.

7. The learned counsel for the complainant was called upon to explain this incongruity. Expect to say that at this stage, the court cannot accept and act upon Annexure A8 order dated 02/07/1998, no other submissions are made on this specific aspect.

8. It is not as though the learned counsel for the petitioner relies only on Annexures A6 and A8. The learned counsel for the petitioner points out that either in the original complaint or in the present complaint, no specific allegation

whatsoever is raised that the complainant had any personal interaction with the petitioner/third accused. Nay contrary specific allegations have been raised in both the complaints, points out the learned counsel. I have been taken through the relevant averments which appear in paragraph 7 of both complaints (copies of which are produced as Annexures A3 and A1 respectively). In those, no specific allegation whatsoever is raised even against the Manager of the Insurance Company who is specified by office in the first complaint. No specific allegation alleging any specific overt act or covert omission is even alleged specifically against the petitioner. The contra assertion made is that it was one Sreekumar allegedly a representative of the third accused - Branch Manager of the United India Insurance Company Limited who had indulged in the overt act.

9. I am in agreement with the learned counsel for the petitioner that even if Annexure A8 were not to be looked into, the prosecution against the petitioner must fail for the specific circumstance that no allegation has been raised against the petitioner in either of the two complaints and in fact the averments indicate that the allegations are against one

Sreekumar who is said to be the representative of the Branch Manager of the United India Insurance Company.

10. I am, in these circumstances, satisfied that this is an eminently fit case where powers under Section 482 Cr.P.C can and ought to be invoked to bring the premature termination this undeserved prosecution against the petitioner/third accused. This Criminal Miscellaneous Case is accordingly allowed. Proceedings in C.C.No.1140/2003 pending before the learned Judicial First Class Magistrate Court-I, Alappuzha in so far as it relates to the petitioner/third accused is hereby quashed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006